



Office of the City Manager

INFORMATION CALENDAR
January 25, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Director, Planning and Development Department
Subject: LPO NOD: 1960 University Avenue/#LMSA2021-0002

INTRODUCTION

The attached Landmarks Preservation Commission Notice of Decision (NOD) is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.240.A, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk, and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has approved a Structural Alteration Permit (SAP) for new signage at the subject City Landmark site. This action is subject to a 15-day appeal period, which began on January 10, 2022.

BACKGROUND

BMC/LPO Section 3.24.300 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying a Structural Alteration Permit. In order for Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, a Councilmember must move this Information Item to Action and then move to set the matter for hearing on its own. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by January 25, 2022. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must rule on the application within 30 days of closing the hearing, otherwise the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Jordan Klein, Director, Planning & Development Department, 510-981-7534
Steven Buckley, Land Use Planning Manager, Planning & Development Department, 510-981-7411
Fatema Crane, Landmarks Preservation Commission Secretary, Planning & Development Department, 510-981-7410

Attachments:

1: Notice of Decision – #LMSA2021-0002, 1960 University Avenue/The City Landmark Bertin Properties.



LANDMARKS
PRESERVATION
COMMISSION
NOTICE OF DECISION

DATE OF BOARD DECISION: October 7, 2021
DATE NOTICE MAILED: January 10, 2022
APPEAL PERIOD EXPIRATION: January 25, 2022
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification): January 26, 2022¹

1960 University Avenue – The City Landmark Bertin Properties

Structural Alteration Permit (#LMSA2021-0002) to install new signage on a property that features a City Landmark building.

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following permit:

PERMITS REQUIRED:

- Structural Alteration Permit, pursuant to Berkeley Municipal Code Section 3.24.200

APPLICANT: Alexis Borabaugh, 1729 Delaware Street, Berkeley, CA

ZONING DISTRICT: Downtown Commercial Mixed Use (CD-MU)

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Section 15331 of the CEQA Guidelines (Historical Resource Rehabilitation).

The application materials for this project are available online at:

¹ Pursuant to BMC Section 23B.32.090, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Use Permit becomes effective the day after the certification deadline has passed.

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<http://www.cityofberkeley.info/zoningapplications>

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

COMMISSION VOTE: 7-0-1-1

YES: ADAMS, ENCHILL, LEUSCHNER, MONTGOMERY, OLSON, SCHWARTZ,
TWU

NO: NONE

ABSTAIN: FINACOM

ABSENT: CRANDALL

TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley; or by facsimile to (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.
 - a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the Commission made under the provisions of Chapter 3.24.
2. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
 - a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
 - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
 - c. The fee for all appeals by Applicants is \$2500.

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If no appeal is received, the landmark designation will be final on the first business day following expiration of the appeal period.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

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PUBLIC COMMENT:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

FURTHER INFORMATION:

Questions about the project should be directed to the project planner, Fatema Crane, at (510) 981-7410 or fcrane@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, 3rd Fl., between 8 a.m. and 4 p.m., Monday through Friday, except Tuesday when the Center closes at 3PM.

ATTACHMENTS:

1. Findings and Conditions
2. Project Plans



ATTEST: _____
Fatema Crane, Secretary
Landmarks Preservation Commission

Cc:

City Clerk
Applicant: Alexis Borabaugh, 1729 Delaware Street, Berkeley, CA
Property Owner: John Gordon, 2901 Rose Street, Berkeley, CA

FINDINGS AND CONDITIONS

1960 University Avenue Bertin Properties

Signage Alteration Permit #LMSA2021-0002

Installation of a new painted wall sign and a new projecting sign on one storefront of a designated City Landmark building with multiple tenancies (APN 057 2024 021 01).

FINDINGS REQUIRED UNDER CEQA

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

FINDINGS RELATED TO THE SECRETARY OF THE INTERIOR’S STANDARDS

Regarding the Secretary of the Interior’s Standards for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The property has historically been used to support downtown commercial and office uses. The restaurant use was approved for this space in 2009 under #MODUP09-70000012 and is a commercial use that will continue to support downtown.
2. The scope of proposed work would not alter any significant features.
3. The signage will be contemporary and will not lead to any changes that would create a false sense of historical development. Aside from the proposed signage, the applicant does not propose to alter the existing building.
4. The proposed signage will not affect any changes to the property that have acquired historic significance in their own right.
5. The required alterations to the building to accommodate the proposed signage are minimal and will not affect any distinctive materials, features, finishes, and construction techniques, or examples of craftsmanship that characterize the property. Anchors in the historical façade shall be as discreet as possible and patched when signage is removed (see Condition of Approval #7).

6. No deteriorated historic features will be affected by this request and none are proposed to be replaced.
7. The applicant does not propose chemical or physical treatments. However, standard conditions of Structural Alteration Permit approval would require any chemical or physical treatments to be undertaken using the gentlest means possible (see Condition of Approval #7).
8. The project does not have the potential to affect any archaeological resources because the applicant proposes no excavation.
9. The required alterations to the building to accommodate the signage are minimal. The new work will be compatible with the old through its use of colors and materials and by conforming to the Sign Ordinance (BMC Section 20.24) and Downtown Design Guidelines.
10. The signage will be installed in such a manner that, if it were removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

FINDINGS REQUIRED UNDER LANDMARK PRESERVATION ORDINANCE

1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve and enhance the characteristics and features specified in the designation for this property. Specifically:

As described in the previous discussion of the Secretary's Standards for Rehabilitation, staff finds that the proposed signage will not adversely affect the exterior features of the landmark, the special character or special historical, architectural or aesthetic interest or value of its site and will preserve its distinguishing features. The signs would be installed without impairing the building, and their design would be compatible with the existing proportions, colors, and scale of the architecture.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Permit, under the title 'Structural Alteration Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Plans and Representations Become Conditions

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

3. Subject to All Applicable Laws and Regulations

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Zoning Adjustments Board or Zoning Officer, Building and Safety Division, Public Works Department and other affected City divisions and departments.

4. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- B. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

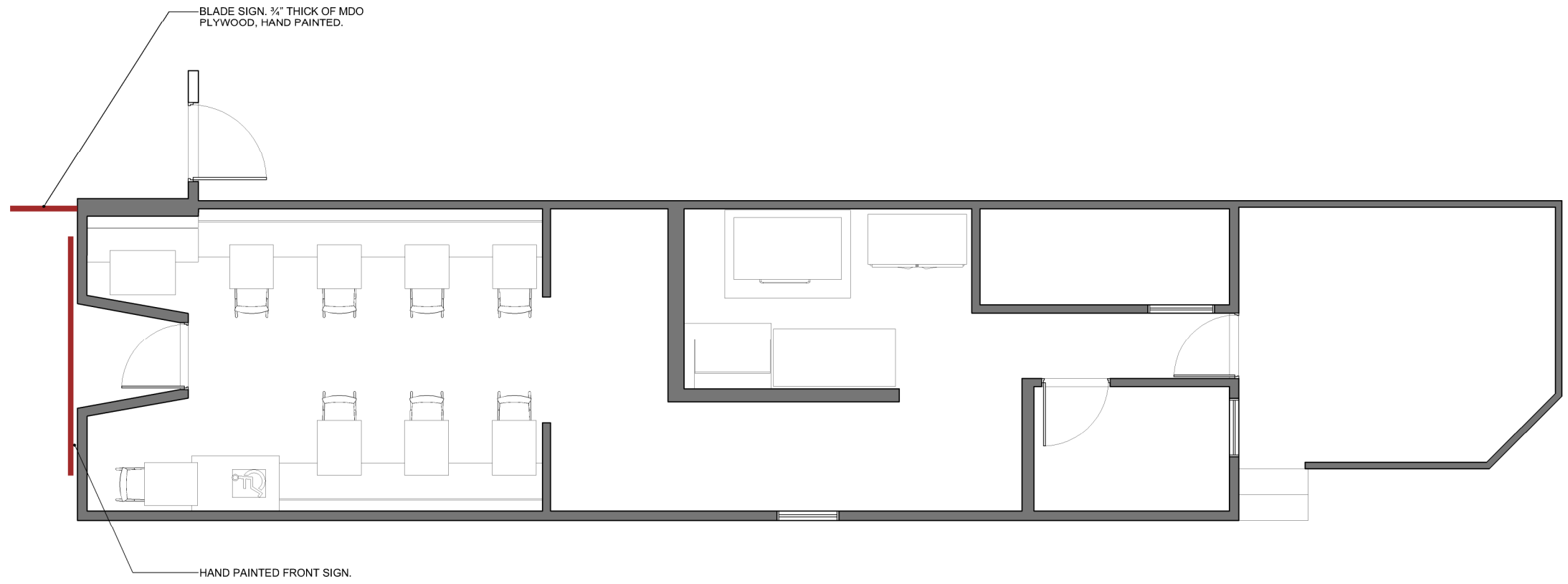
5. Indemnification Agreement

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS

The following additional conditions are attached to this Permit:

6. **Anchors** in the historical façade shall be as discreet as possible and patched when signage is removed.
7. **Any chemical or physical treatments** shall be undertaken using the gentlest means possible.
8. **Exterior lighting**, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
9. **Colors.** Prior to staff sign-off of the building permit set of drawings, the applicant shall submit color and materials information for review and approval by historic preservation staff.
10. **Materials** shall be matte, unless otherwise noted.
11. **Prior to submittal of any building permit application**, the property owner shall submit sign applications to correct and to bring into compliance all existing and unpermitted signage at this location, in accordance with Berkeley Municipal Code (BMC) Title 20, the Sign Ordinance.



1 SIGN LOCATION - FLOOR PLAN

NOTE:
LOCATIONS SHOWN ON PLAN ARE FOR GENERAL REFERENCE ONLY. SEE ELEVATIONS & DETAILS FOR SPECIFIC LOCATIONS & MOUNTING INFO.

SEAL:

SIGNATURE:

CONTENT:
SIGN PACKAGE

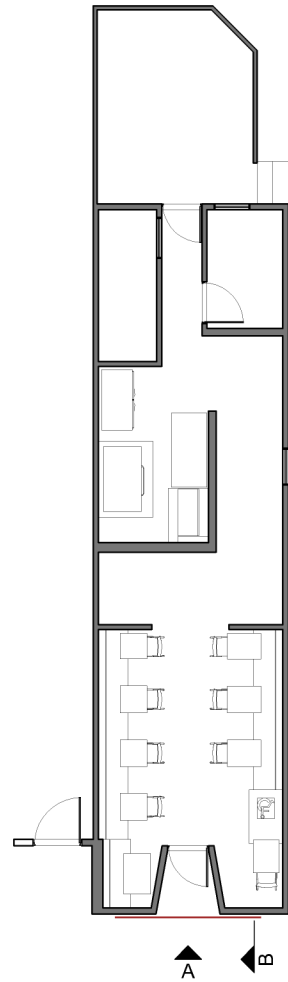
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FLOOR PLAN

SHEET NO:
001

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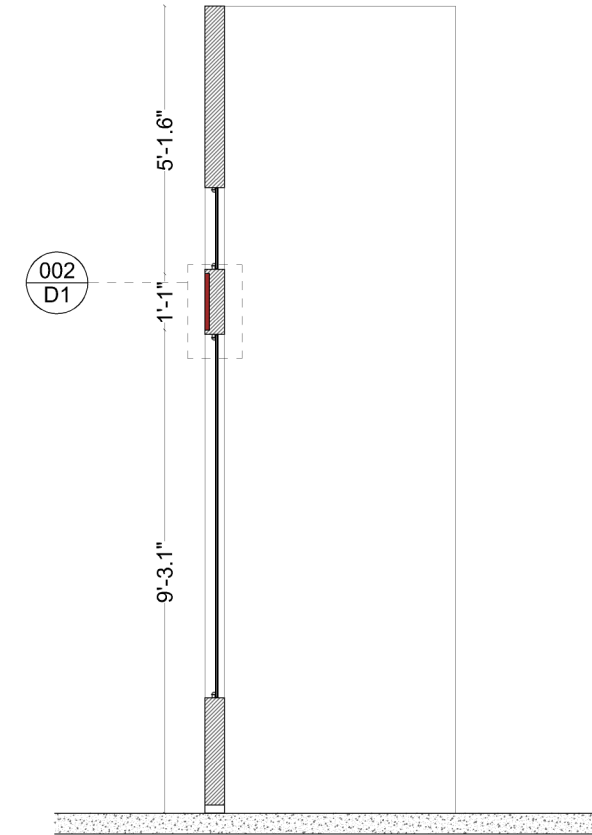
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AUGUST 2021



1 SIGN LOCATION - KEY PLAN



2 SIGN LOCATION - FRONT ELEVATION A



3 SIGN LOCATION - SECTION B



4 SIGN LOCATION - DETAIL 01

SEAL:

SIGNATURE:

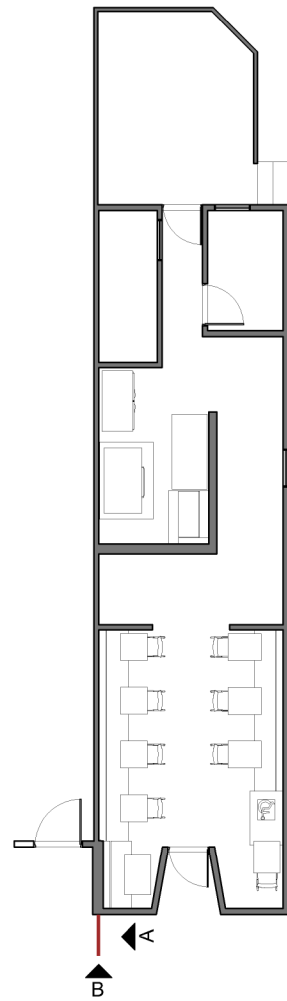
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FRONT SIGN

SHEET NO:
002

SCALE:

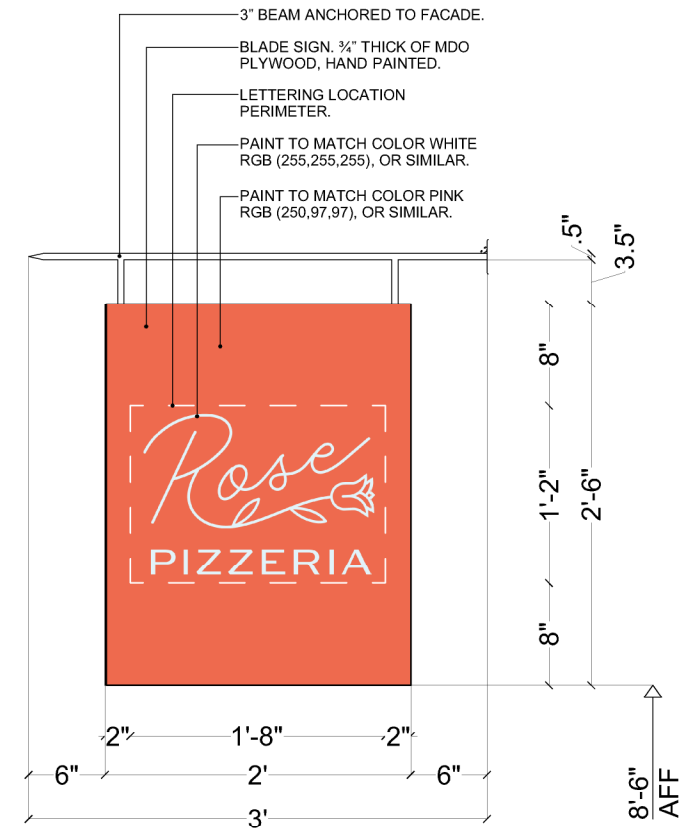
DATE:
AUGUST 2021



1 SIGN LOCATION - KEY PLAN



2 SIGN LOCATION - SIDE ELEVATION A



3 SIGN LOCATION - FRONT ELEVATION B

SEAL:

SIGNATURE:

CONTENT:
SIGN PACKAGE

SHEET TITLE:
BLADE SIGN

SHEET NO:
003

SCALE:

DATE:
AUGUST 2021

